90-155

No.

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1989

In re RICHARD MILLAN, Petitioner

PETITION FOR A WRIT OF MANDAMUS/ PROHIBITION TO THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA, AND THE HONORABLE EDWARD RAFEEDIE, AND THE HONORABLE WILLIAM J. REA, JUDGE OF THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA

Richard A. Millan
Counsel of Record
In Propria Persona

12922 Harbor Blvd. #749
Garden Grove, CA 92690
(213) 661-1556

QUESTIONS PRESENTED

1. Whether a litigant appearing in Propria Persona in the United States District Courts is entitled to the same Constitutional protections afforded to litigants represented by counsel.

2. Whether a litigant appearing in Propria Persona in the United States District Courts has a right to be protected from partial and biased judges, to have the right to a fair trial in front of an unprejudiced factfinder, and to have the law as it is written enforced.

3. Whether a litigant who has been the victim of fraud on the court continues to be bound by the final judgment rule before he or she may seek relief from the Courts of Appeal or the United States Supreme Court when the District Court refuses to act upon the complaints of misconduct by the adverse party.

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

CASE NO. CV-87-2283-WJR

PARTIES TO THE PROCEEDINGS

PARTIES

RICHARD MILLAN Petitioner	Richard Millan 12922 Harbor Blvd. #749 Garden Grove, CA 92690 (213) 661-1556
v.	
JUDGE WILLIAM J. REA Respondent	UNITED STATES DISTRICT COURT CENTRAL DISTRICT OF CALIFORNIA OFFICE OF THE CLERK U.S. COURTHOUSE Los Angeles, Ca 90012
JUDGE EDWARD RAFEEDIE Respondent	UNITED STATES DISTRICT COURT CENTRAL DISTRICT OF CALIFORNIA OFFICE OF THE CLERK U.S. COURTHOUSE Los Angeles, Ca 90012

REAL PARTIES IN INTEREST

MARSHA BENNETT Respondent	Steven K. Lubell, Esq. 1234 Sixth Street Suite 203 Santa Monica, Ca 90401
COLLEEN STEINBAUGH Respondent	Steven K. Lubell, Esq. 1234 Sixth Street Suite 203 Santa Monica, Ca 90401

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I. BASIS FOR SUBJECT MATTER JURISDICTION

The All Writs Statute, 28 U.S.C. § 1651 (1982) provides that the Supreme Court and the Courts of Appeals may issue "all writs necessary or appropriate in aid of their ....Jurisdiction[s] and agreeable to the usages and principles of law." That Statute unquestionably gives the Supreme Court the power to issue the writ petitioner seeks.

This Petition for a Writ of Mandamus ("Petition") is one of those rare cases whereby the United States Supreme Court has a case presented to the Court that contains each and every one of the five point guidelines for the issuance of a Writ of Mandamus that the Ninth Circuit Court of Appeals enunciated in Bauman v. United States District Court, 557 F.2d 650 (9th Cir. 1977).

Mandamus is proper in this case in that petitioner will show that the District Court has used two standards of justice in this action: one standard for lawyers and one standard for parties appearing in propria persona.

Mandamus is proper in this case in that petitioner will show that the District Court has for two years refused to render a decision on a lawfully filed motion to disqualify counsel.

II. STATEMENT OF THE CASE

Petitioner, Richard Millan ("Millan") is a non-lawyer appearing in propria persona in this action. Millan, however, has written every document in the Court files submitted by Millan without the help of legal counsel.

This case is about crimes, well-planned and carried out crimes of

bankruptcy fraud, wire fraud, tax fraud, securities fraud and mail fraud. Crimes that these defendants were warned not to carry out and still they persisted.

This action was commenced on April 4, 1987, alleging eight causes of action under the Racketeer Influenced and Corrupt Organizations Act ("RICO"), Title 18 U.S.C. §§ 1961-1965, with the predicate acts of violations of Title 18 U.S.C. § 1943 (Wire Fraud), 18 U.S.C. § 1941 (Mail Fraud) and Title 18 U.S.C. § 152 (Bankruptcy Fraud). The above counts were brought against the following defendants: Marsha Bennett ("Bennett"), Colleen Steinbaugh ("C. Steinbaugh"), and Fashion Embroidery Inc., ("Fashion") and former defendants and co-conspirators Murray Gardner ("M. Gardner"), Bonnie Gardner ("B. Gardner") and Richard Steinbaugh (CR. 1) have settled their part in this action.

Millan met Bennett in October of 1983, and married her on December 2, 1983. The marriage lasted 7 months because Millan would not participate in a planned fraud on the U.S. Bankruptcy Court as more clearly explained in **Appendix G, pages A-31-A-56.**

Defendant Marsha Bennett is a beautiful woman, a former Miss Laguna Beach, Miss Orange County and Miss California. Bennett had many business and other relationships with her stepfather Douglas Martin that she hid from Millan and the world. It was not until 1987 that some of these ventures collapsed and forced Bennett to bring some of those transactions with Martin to the light of day through documents filed by attorney Steven Lubell with the Los Angeles County Recorder's Office. (<u>See</u> **Appendix BB, pages A-168-A-170 and C.R. 62, pages 58-60.)** A further cloud on

the horizon was the fact that Bennett's mother Colleen Steinbaugh was in the process of obtaining a divorce from Richard Steinbaugh. The Steinbaughs faced an uncertain future because they were planning to file separate bankruptcy petitions. Further complicating the problems of Bennett and the Steinbaughs was the fact that the Steinbaughs owned 30,000 shares of a company called Fashion Embroidery Inc.

This stock represented their sole remaining asset. Bennett and the Steinbaughs, along with the other defendants in this case, concocted a plan to sell the 30,000 shares of stock and hide the sale or the stock from the United States Bankruptcy Court.

While searching for a buyer for the 30,000 shares of stock, Bennett ran into Millan, married him, and tried to enlist him in her fraud scheme.

That this enticement did not work is the subject of four of the RICO counts in the present action before the District Court.

On March 14, 1988, Millan filed a motion for leave to file his first amended complaint (CR: 33)

On April 19, 1988, Millan's motion for leave to file his first amended complaint was denied. (CR: 42)

On April 25, 1988, Millan filed a notice of appeal to the Ninth Circuit Court of Appeals (CR: 45)

On June 27, 1988, the Ninth Circuit Court of Appeals denied Millan's appeal on the grounds of "lack of jurisdiction." (See: Appendix A, page A-1-A-2.)

On June 13, 1988, Millan filed concurrent motions to recuse Judge Rea and to disqualify Lubell. (CR: 62)

On June 27, 1988, defendants filed their opposition to Millan's concurrent

motions to recuse Judge Rea and to disqualify Lubell. (CR: 65). (See: Appendix H, page A-57.)

On August 26, 1988 Judge Edward Rafeedie denied Millan's motion to recuse Judge Rea; however he did not rule on the concurrent motion to disqualify Lubell. (CR: 73). (See: Appendix C, pages A-6-A-8.)

On September 2, 1988 defendants Bennett & Steinbaugh filed a motion for summary judgment against Millan. (CR: 74)

On September 13, 1988, Millan filed his motion for summary judgment against Bennett and Steinbaugh. (CR: 89)

On October 17, 1988, Minute Order issued granting partial summary judgment to defendants Bennett & Steinbaugh. Court denies Millan his motion for summary judgment. (CR: 92)

On November 8, 1988 Millan filed a notice of appeal to the 9th Circuit Court of Appeals. (CR: 95)

On February 23, 1990, appeal dismissed for failure to comply with rules. (CR: 101) (**See: Appendix F, page A-29-A-30.**)

III. WHY THE WRIT SHOULD ISSUE

1. THE PARTY SEEKING THE WRIT HAD NO OTHER ADEQUATE MEANS, SUCH AS A DIRECT APPEAL, TO ATTAIN THE RELIEF HE OR SHE DESIRES.

Millan appealed to the Ninth Circuit Court of Appeals on April 25, 1988 from an order entered on April 21, 1988 by the District Court. Millan contended in that appeal to the Ninth Circuit Court of Appeals that the following misconduct by attorney Lubell had occurred. (**See Appendix E, pages A-26-A-28.**) As noted in Appendix E,

this Court can see that the Ninth Circuit Court of Appeals had every opportunity to convert this appeal into a writ of mandamus yet chose to deny the appeal on the grounds that there had been no final judgment in the case:

> "This is not a final, appealable order under 28 U.S.C. §§ 1291, 1292 or the collateral order doctrine. Accordingly, this appeal is dismissed for lack of jurisdiction. Appellant's request for a stay is denied." (See: App. A, page A-1-2)

On November 8, 1988, Millan filed a Notice of Appeal to the Ninth Circuit from a minute order entered on October 17, 1988 by the District Court (C.R. 95), and Millan on December 5, 1988 filed a docketing statement with the Ninth Circuit Court of Appeals more clearly described in Appendix E, pages A-26-A-28 alleging many of the same charges against attorney Steven Lubell as had been filed in the first Ninth Circuit appeal. By the time that the

final order was issued by the District Court, the time for filing the docketing statement with the Ninth Circuit had passed. A further complication was that Millan for the last two years has not been able to obtain a final order on his motion to disqualify attorney Steven Lubell ("Lubell"). One further impediment to perfecting this appeal was that Millan had timely ordered all transcripts of the hearings on September 26, 1988 and October 17, 1988 from the court reporter. It was not until February 27, 1989 that Millan received copies of the transcripts; however, the critical portion of the morning session of the hearings on September 26, 1988 were never transcribed and have never been received by Millan to this day, June 11, 1990. By the time that Millan received the partial transcripts he was out of

time to comply with the Ninth Circuit Rules for processing his appeal.

During the period of April 1987 to December 1988, Millan acted with diligence as the court docket will show. The frustrations that came about by the events best described in this document and the chronology of the efforts by Millan to obtain an order from the district court on the disqualification of Lubell, (See App FF, pgs. A-235-242), prevented Millan from perfecting his appeal. Millan had been told by Judge Rea to return to Court when the appeal was finished and Millan was never able to perfect the appeal because of the circumstances related herein.

It is clear that the supervisory powers over the District Courts of the United States that is inherent in the United States Supreme Court is justifiably called upon by Millan to correct

this situation. The confusion that has been caused by the events noted in this document require this Honorable Court to step into this case in its supervisory capacity.

2. **THE PETITIONER WILL BE DAMAGED OR PREJUDICED IN A WAY NOT CORRECTABLE ON APPEAL.**

As early as 1824 the Supreme Court spoke of the requirements of Supreme Court intervention by Writ of Mandamus. Writing for the Court Chief Justice Marshall stated, in denying a writ of mandamus filed by an attorney who had been suspended from practice from an inferior court, that the Court was not inclined to intervene,

> "unless it were in a case where the conduct of the Circuit or District Court was irregular, or was flagrantly improper." Ex parte Burr, 22 U.S. Wheat 529 (1824).

This instant action is replete with a persistent disregard for the federal rules, flagrant trial court error and

attorney misconduct that was brought to the attention of the District Court. However, the District Court refused to act on petitioner's complaints and abdicated its power and duties to the State Bar of California.

Defendant Bennett and attorney Lubell concealed the identity of the most important witness in this case and obtained an order denying an amendment to Millan's complaint and an order granting a partial summary judgment to defendants Bennett and Steinbaugh by the following misconduct.

a. Suppression of Evidence

Bennett and Lubell suppressed the new married name of Bennett in interrogatories (App. BB[C], pgs A-145-146, para 25) and in deposition (App BB[D], pg A-146, para 26) the true reasons for this suppression are fully explained in (App BB[E], pg A-147-149, paras 27-28)

(App BB[F], pg A-149-150, paras 29-30) (App BB[G], pg A-150-154, para 31-34).

Bennett and Lubell further suppressed the evidence of a lawsuit filed by Lubell for Bennett in her new married name, in interrogatories (App. BB[I], pg A-154-156, para 36) and in deposition and by subpoena (App. BB[I], pg A-156, para 37), for the express reason of concealing the true married name of Bennett and concealing the identity and complicity of her new husband Uday Raj Sawhney. (App. BB[I], pgs A-157-158, para 38).

b. Perjury

Bennett committed perjury with the knowledge of counsel in interrogatories, (App BB[J], pg A-158-159, para 39). The true answers are clearly contained in (App BB[K], pgs A-160-162, para 40 1-5).

Bennett committed perjury and counsel suborned that perjury in deposi-

tion (App BB[Q], pg A-181-184, paras 22-24) the true answers are contained in (App. BB[Q], pgs A-184-185, para 24)

Bennett committed perjury and counsel suborned that perjury in deposition (App [R], pg A-185-186, para 25-26)

Bennett committed perjury and counsel suborned that perjury in sworn documents filed with the Court. (App. CC, pgs A-194-195, A-203-205, paras 8 and 14.) The truth of the statement by Bennett is found in (App. CC, pg A-203, para 14 [(3)][(4)] and at (App. CC, pg A-203, para 14 [(3)] (CR 88, pg 465-466) (CR 83, pg 389)(CR 83, pgs 406-407)(CR 83, pg. 437 [history])(CR 83, pg 461).

Bennett committed perjury and counsel suborned that perjury in sworn documents filed with the Court. (App. CC, pg A-200-203, para 12 and 13.) The true facts of Bennett's statement are more clearly found in (App. CC, pgs

A-201-203, paras 13[(6)][(7)][(8)]; (App. CC, pg A-206-207, para 15 [(6)][(7)][(8)][(10)], (CR 83 [(4)] and (App CC, pg A-203, para 14 [(3)](CR 88 pg 465-466)(CR 83 pg. 389)(CR 83 pgs. 406-407)(CR 83 pg. 437 [history])(CR 83 pg. 461)

c. Concealment of Documents

Bennett and Lubell concealed the following documents that were under lawful subpoena. (App. BB[I], pgs. A-156-158, para 37-38)(CR 62 pgs 41-45); (App. BB[L], pgs. A-163-171, para 41-53) (CR 83 pgs. 497-498) (CR 83 pg. 499) (CR 83 pg. 500).

d. Concealment of Witnesses

Bennett and Lubell concealed the material witness Uday Raj Sawhney and completely prejudiced Millan's case and obtained a order denying Millan leave to

amend his complaint and an order granting a partial summary judgment against Millan based on the concealment. (App BB[C], pgs A-145-146, para 25) and in deposition (App BB[D], pg A-146, para 26) the true reasons for this suppression are fully explained in (App BB[E], pg A-147-149, para 27-28) (App BB[F], pg A-149-150, para 29-30) (App BB[G] pg A-150-154, para 31-34).

Bennett and Lubell further suppressed the evidence of a lawsuit filed by Lubell for Bennett in her new married name in interrogatories (App BB[I], pg A-154-156, para 36) and in deposition and subpoena (App BB[I], pgs A-156, para 37), for the express reason of concealing the true married name of Bennett and concealing the identity and complicity of her new husband Uday Raj Sawhney. (App BB[I], pgs A-157-158, para 38).

e. Concealment of Material Facts, See:

Appendix BB, Sec. [I], pgs. A-154-158, Sec. [Q], pgs. A-181-185, Appendix M, pgs. A-85-100.

f. Misrepresentation of Prior Court Proceedings, See: Appendix BB, Secs. [M], [N], [O], [P], pgs. A-171-181.

g. Misrepresentation of Cited Authority, See: Appendix AA, pgs. A-137-139.

h. Harassment of Opposing Party, See: Appendix Z, pgs. A-128-136, Appendix BB, Secs. [A], [B], [C], [D], pg. A-140-146.

i. Ex Parte Conversation with Law Clerk, See: Appendix M, pgs. A-85-100.

j. The misconduct in paragraphs 2(a) through (i) above violated the:

(a)(1) United States District Court Rules.

(a)(2) Rules of Professional Conduct, See: App N, pg. A-101-102, Appendix Q, pg. A-105-106, Appendix O, pg. A-103, Appendix P, pg. A-104, Appendix S, pg. A-111-112, paras.

(1), (2)(A), pgs. A-114-116, paras. 41-42, Appendix U, pg. A-120-121, Appendix V, pg. A-122.

(a)(3) ABA Model Rules, See: Appendix X, page A-124-125.

(a)(4) California Penal Code, §653F(a), See: App S, pg A-117, para 43.

(a)(5) California Business and Professions Code, §§6128(a) and 6068(d), See: Appendix S, pgs. A-117-118, paras. 44-45, Appendix W, page A-123, Appendix Y, page A-126-127.

These acts of misconduct by Marsha Bennett and defense counsel Steven Lubell have completely prejudiced Millan's case and has led to denials of his motion to amend his complaint and has led to granting a partial summary judgment to these defendants. It has also been the basis for a denial of summary judgment to Millan. The misconduct of counsel and the misconduct of

defendants cannot be correctable on appeal because the damage has already been done.

3. THE DISTRICT COURT'S ORDER IS CLEARLY ERRONEOUS AS A MATTER OF LAW.

a. Millan's motion to disqualify attorney Steven Lubell was filed on June 13, 1988 (C.R. 62). However, as this Court can see, the District Court docket does not reflect the disqualification motion against attorney Steven Lubell in C.R. 62.

Millan calls the attention of this Court to C.R. 65 filed on June 27, 1988, whereby Lubell responds to Millan's disqualification motion. Millan further directs this Court's attention to the fact that as of this date July 10, 1990, the District Court has not acted upon Millan's lawfully filed motion to disqualify attorney Steven Lubell.

b. On August 26, 1988, the Honorable Edward Rafeedie, United States District Judge, denied Millan's motion to disqualify Judge Rea (C.R. 73). It will interest the Supreme Court to note that in the disqualification motion filed by Millan (C.R. 62, page 5, lines 12 through 22) that reads as follows:

> "This Court and this Plaintiff have been the victims of a deliberate scheme and course of misconduct by defendant Marsha Bennett and her Attorney Steven Lubell to mislead this court into decisions that are extremely prejudicial and have done great harm to Plaintiff's case. This scheme has been so pervasive with perjury, fraud on the court, misrepresentation of the records of other cases presented to this Court, concealment of documents, events and people from Plaintiff and this Court and direct false testimony by attorney Steven Lubell before this Court, that adverse rulings have been made by this court on the basis of fraud."

This is a very damaging statement not only on the honesty, integrity and the professional responsibility of attorney Steven Lubell but Millan has

couched this in the strongest possible language. It is fair to say that any court in this country or any judge in this land had he even the faintest thought or hint that there was any misrepresentation in this paragraph by Millan, that judge would have come down upon Millan with the strongest possible Rule 11 sanctions. However, in the words of Judge Rafeedie:

> "Defendants Marshal [sic] Bennett and Colleen Steinbaugh request that the Court impose sanctions on plaintiff pursuant to Federal Rules of Civil Procedure Rule 11. The Court does not find sanctions warranted." **(Appendix C, page A-7.)**

4. THE DISTRICT COURT'S ORDER IS AN OFT-REPEATED ERROR, OR MANIFESTS A PERSISTENT DISREGARD OF THE FEDERAL RULES.

a. It is common knowledge that judges and attorneys would rather that pro se litigants practice their law outside of the courtroom. It is further fair to say that pro se litigants are

not welcome within the confines of the judicial system. Perhaps no better example can Millan show this Honorable Court than a study done by Professor Brewer in an article entitled "Mandamus Power" in the Buffalo Law Review, Vol. 31, 1982 at 68-70. (App. I, pg A-58-61) on the filing of mandamus petitions. In a three-year study, Professor Brewer found that 40 of the petitions filed by pro se litigants were complaining of the District Court's failure to act.

It is Millan's contention that this manifestation of failure to act that was revealed in the study above and in this instant action is a violation of the due process clause, the equal protection clause and the equal access clause of the United States Constitution.

5. THE DISTRICT COURT'S ORDER RAISES NEW AND IMPORTANT PROBLEMS, OR ISSUES OF LAW OF FIRST IMPRESSION.

a. The Order by United States District Court Judge William J. Rea that Millan, a litigant acting in propria persona, take his complaints on attorney misconduct to the State Bar of California.

> "**Mr. Millan:** "I have in many, many motions in front of this court asked this court to investigate the misconduct of Mr. Steven Lubell. Not only in----"
>
> **The Court:** "You are going to have to take that to the State Bar. This court is not here to investigate attorneys in the way they practice law." **(App. R, pg. A-107)**

This order raises a completely new issue as to whether a United States District Court Judge has the power and authority to abdicate to any State Bar Association in the country the powers delegated to that court by the Congress and the Constitution of the United States and by so doing denies the equal protection of the law, equal access to the courts and due process of law as

guaranteed by the Constitution of the United States to persons coming before its bench.

Mandamus is proper in this case in that the Hon. Judge William J. Rea wrote an eloquent decision in Mercury Service Inc. v. Allied Bank of Texas, 117 F.R.D. 147, 156 (1987) (See: Appendix J, pgs A-62-82) that clearly outlines the duties of the court and is an excellent example of the two sets of justice that this Court uses in this case and in the Mercury case.

Mandamus is proper in this case in that the District Court has, for almost two years, refused to render a decision on a duly filed motion to disqualify counsel Steven Lubell in spite of numerous requests and promises by the clerks of the Court that a decision would be brought forth.

Mandamus is proper in this case because of the drastic nature of the proceedings and decisions of this District Court make the nature of the drastic remedy of mandamus embrace its use in this extra-ordinary situation.

Mandamus is proper in that the various circuits are divided in the manner of the imposition of sanctions for violations of Rule 11.

Mandamus is proper in this case as will be shown that motions brought by petitioner to the District Court were denied as the result of fraud and deceit of defendant Marsha Bennett and defense counsel Steven Lubell.

IV. AN ARGUMENT

1. WHETHER A LITIGANT APPEARING IN PROPRIA PERSONA IN THE UNITED STATES FEDERAL COURTS IS ENTITLED TO THE SAME CONSTITUTIONAL PROTECTIONS AFFORDED TO LITIGANTS REPRESENTED BY COUNSEL.

Pro Se Litigation

Access to courts in America is a Constitutional right. The First Amendment of the United States Constitution (See: Appendix K, page A-83) permits the people of this country to petition the government in order to redress grievances. U.S. Const. Amend. I. Included in the right to redress grievances is the right of access to the courts. Matter of N. C. Trading, 586 F.2d 221 (1978).

The right of access to the courts is coupled with a statutory right to conduct a case with or without an attorney:

> "In all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein." 28 U.S.C. § 1654 (1988).

This statutory guarantee has existed since the First Congress Judiciary Act of 1789, § 35, 1 Stat. 73, 92 (1789).

In fact, the right to proceed pro se has risen to Constitutional importance. "The right to assistance of counsel and the correlative right to dispense with a lawyer's help are not legal formalisms. . . [T]he Constitution does not force a lawyer upon a defendant." Adams v. U.S. ex. rel. McCann, 317 U.S. 269, 279, 63 S.Ct. 236, 242, 87 L.Ed. 268, 276 (1942).

Courts have a continuing obligation to take into account a litigant's pro se status.

> "Implicit in the right of self-representation is an obligation on the part of the Court to make reasonable allowances to protect pro se litigants from inadvertent forfeiture of important rights because of their lack of legal training." Traguth v. Zuck, 710 F.2d 90, 95 (2d Cir. 1983).

This duty to protect the pro se litigant triggers procedural protections including the right to amend a complaint (unless the complaint is clearly

futile). Noll v. Carlson, 809 F.2d 1446, 1448 (9th Cir. 1987), to provide the litigant with a notice of deficiencies in the complaint to ensure effective amendment, Eldridge v. Block, 832 F.2d 1132 (9th Cir. 1987), and to notify the litigant of the right to file counter-affidavits and other responsive materials, Roseboro v. Garrison, 528 F.2d 309, 310 (4th Cir. 1975).

In this instant action the District Court refused to allow Millan to file the first amended complaint.

At the time of the denial, the trial date had not been set, discovery had not closed and had not been completed. The District Court refused to consider the allegations of attorney misconduct brought to its attention by Millan and all evidence placed before it by Millan. The District Court further refused to investigate the allegations

of fraud that led to the denial of the motion to amend the complaint.

The motion to allow the filing of the amended complaint was denied on the basis that it would prejudice the defense although Mr. Lubell in open court stated that his clients would not be prejudiced and the other defense counsel had no objection to the filing of the amended complaint.

The District Court noted that Millan should have known about the other parties as of July 1985, even though Millan did not learn of them until he received documents from defendant Murray Gardner in January of 1988 and the events sought to be included in the amended complaints covered actions by defendants for the years of 1985 though 1987. The concealment of the true married name of defendant Bennett kept Millan from finding out the identity of

the most important material witness in this action, her new husband Uday Raj Sawhney. This material witness was an accountant that worked for Millan on a project Millan commissioned to find out the net worth of a company called Certified Tank Manufacturing Inc., a company owned by Bennett and offered for sale to Millan by Bennett. Sawhney was also hired by Bennett to audit the books and records of defendant Fashion Embroidery Inc. from July 1984 through 1987 dates that were after the date of July 25,1984 that she told the Court in a sworn declaration that she had resigned as an officer and director of Fashion Embroidery Inc. (CR: 74, pages 40-47.)

During those years, Uday Raj Sawhney and Bennett had prepared false tax returns for Fashion Embroidery and had prepared false books of accounts, false financial information and false

credit information unbeknownst to Millan.

Sawhney states his knowledge very clearly in a letter written by him to Murray Gardner dated July 21, 1986.

> "..Murray, I am available to help and as you notice I have not been quick with the bills. After-all who knows better than myself what you can or cannot pay?" **(App. EE, pg A-233).**

Attorney Steven Lubell kept Millan from this information. Millan did not even know that Bennett had married Sawhney until after January 1987.

Bennett could not have married Sawhney until 1986 since the marriage of Millan and Bennett had not ended until March of 1986. There was no possible way that this material witness could have been known to Millan in 1985 as Lubell claimed.

As soon as Millan had found out the true identity of Uday Raj Sawhney, the

material witness that Lubell concealed Millan moved to amend his complaint. Judge Rea denied the motion to amend.

A pro se litigant must adhere to applicable rules of procedure and technical law, Birl v. Estelle, 660 F.2d 592, 593 (5th Cir. 1981), but is not subject to "harsh application of technical rules." Targuth v. Zuck, 710 F.2d 90, 95 (2d Cir. 1983). "We are generally more solicitous of the rights of pro se litigants, particularly when technical jurisdiction requirements are involved." Borzeka v. Heckler, 739 F.2d 444, 447 N.2 (9th Cir. 1984).

In this instant action, Millan went to great lengths to outline the multiple predicate acts and multiple schemes of these defendants. Millan compiled an exhibit of documents of more than 500 pages, (CR: 88), and an Exhibit entitled "Rico Pattern and Continuity of

Predicate Acts" (CR:87 pages 27 through 47) (See: Appendix G, pgs A-31-56), Millan provided the Court with a flow chart exhibit entitled "Defendants History of Prior Schemes and Defunct Business Ventures" (CR:87, pages 48-53) Millan provided the Court with a complete itemized direct rebuttal to sworn declarations by Bennett and Steinbaugh (CR: 81, paras 3-31), all of the documents, declarations, rebuttals were all but ignored by the District Court. This compilation was accomplished from documents that Millan received in February 1988 from defendant Murray Gardner.

In general, courts must hold a pro se complaint,

> "however inartfully pleaded" to "less stringent standards than formal pleadings drafted by lawyers." Haines v. Kerner, 404 U.S. 519, 520, 92 S.Ct. 594, 596, 30 L.Ed. 2d 652 (1972) (per curiam). See also Estelle v. Gamble, 429

U.S. 97, 106, 97 S.Ct. 285, 292, 50 L.Ed 2d 251, 261 (1976).

The liberal construction given to pro se papers is to insure that the claims of the pro se litigant are given "fair and meaningful consideration." Madyan v. Thompson, 657 F.2d 868, 876 (7th Cir. 1981). Fair and meaningful consideration is crucial to due process. Indeed, fair play is the essence of due process. Galven v. Press, 347 U.S. 522, 74 S.Ct. 737, 98 L.Ed. 911, rehearing den'd. 348 U.S. 852, 75 S.Ct. 17, 99 L.Ed. 671 (1954). Because it is unclear how far a trial court must go to assist a pro se litigant,

> ". . . the ultimate determination of whether a pro se litigant has received a fair and meaningful consideration of his claims must be made on a case by case basis." Caruth v. Pinkney, 683 F.2d 1044, 1050 (7th Cir. 1982), cert. den'd 459 U.S. 1214, 103 S.Ct. 1212, 75 L.Ed. 2d 451 (1983).

Ultimately, the pro se litigant can expect free access to the courts and some assistance with procedural matters from the courts as courts give them their due process.

2. WHETHER A LITIGANT APPEARING IN PROPRIA PERSONA IN THE UNITED STATES FEDERAL COURTS HAS A RIGHT TO BE PROTECTED FROM PARTIAL AND BIASED JUDGES, TO HAVE THE RIGHT TO A FAIR TRIAL IN FRONT OF AN UNPREJUDICED FACTFINDER, AND TO HAVE THE LAW AS IT IS WRITTEN ENFORCED.

Impartial Tribunal

While a pro se litigant is entitled to a liberal reading of his or her papers, all litigants are entitled to an impartial and disinterested tribunal. The Due Process Clause of the Constitution (See: Appendix L, page A-84) requires adjudicative proceedings be neutral in order to prevent unjust or mistaken deprivations of life, liberty, or property, Mathews v. Eldridge, 424

U.S. 319, 96 S.Ct. 893, 47 L.Ed. 2d 18 (1976), and to promote dialogue and participation in the decision making process. Carey v. Piphus, 435 U.S. 247, 98 S.Ct. 1042, 55 L.Ed. 2d 252 (1978).

> "At the same time, it preserves both the appearance and reality of fairness . . . by ensuring that no person will be deprived of his interests in the absence of a proceeding in which he may present his case with assurance that the arbiter is not predisposed to find against him." Marshall v. Jerrico, Inc., 446 U.S. 238, 242, 100 S.Ct. 1610, 1613, 64 L.Ed. 2d 182, 189 (1980).

The right to be heard by an impartial tribunal is a statutory right. 28 U.S.C. §144 (1988) reads in part:

> "Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter has pending a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding."

28 U.S.C. § 544 (1988) provides, in pertinent part:

> "(a) Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned; (b) He shall also disqualify himself in the following circumstances: (1) Where he has personal bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceeding . . ."

Finally, the Code of Judicial Conduct states that a judge shall disqualify himself in a proceeding where his impartiality might be questioned. Code of Judicial Conduct Canon 3(c)(1) (1988).

The goal of the self-initiating judicial disqualification statute (28 U.S.C. § 455) is not only to alleviate impartiality but also to foster the appearance of impartiality.

> "Any question of a judge's impartiality threatens the purity of the judicial process and its institutions." Potashnick v. Port City Const. Co, 609 F.2d 1101, 1111 (5th Cir. 1980).

Because the judge has an obligation to be free of the appearance of impartiality, he must consider what is revealed to the public and the parties, using an objective standard. Id. The statute requires the judge to disqualify himself when a reasonable person, knowing all of the circumstances, would have doubts about the judge's impartiality. United States v. Winston, 613 F.2d 221, 222 (9th Cir. 1980).

In addition, the judge must recuse himself if he is biased or prejudiced. 28 U.S.C. § 455(b)(1). An alleged prejudice or bias requiring recusal

> "must stem from an extrajudicial source and result in an opinion on the merits or some basis other than what the judge learned from his participation in the case." United States v. Grinnell, 384 U.S. 563, 583, 86 S.Ct. 1698, 1710, 16 L.Ed. 2d 778, 793 (1966).

Not only must a judge disqualify himself if he is biased, prejudiced, or

partial, he must recuse himself if he has off-the-record contact that might influence the outcome of the litigation. Code of Judicial Conduct Canon 3(A)(4) states:

> "A judge should neither initiate nor consider ex parte . . . communications concerning a pending or impending proceeding."

While not every ex parte communication requires reversal, United States v. Green, 544 F.2d 138 (3rd Cir. 1976), cert. den'd, 430 U.S. 910, 97 S.Ct. 1185, 51 L.Ed. 2d 588 (1977),

> "[S]ome conduct is so inimical to the fair and impartial administration of justice, however, that the presumption of prejudice arising therefrom is conclusive and requires a reversal." Kennedy v. Great Atlantic and Pacific Tea Co., 551 F.2d 593 (5th Cir. 1977).

In this instant action the law clerks of the District Court have clearly taken sides and prejudiced the case of Millan. A law clerk by the name of "Harry" had an ex parte conversation

with Lubell during a time that the Court, "Harry", Lubell and other defendants' attorneys knew that Millan would be out of the country to attend the Olympic Games in Seoul, Korea. These ex parte conversations were kept from Millan by the law clerk "Harry" and by Lubell and it was only the honesty of one of the defense counsel that prevented Millan from being totally ignorant of the ex parte conversation between "Harry" and attorney Steven Lubell. That ex parte conversation not only completely prejudiced Millan's case, it forced Millan to cancel his trip to Korea to the Olympics Games after he had requested of the Court permission to attend the games and had been given that permission by the Court. The District Court even went so far as to schedule the start of the trial when Millan returned from the Olympics in October of

1988. See: Appendix Z, pages A-131-133, para 2.

Millan believes that one further manifestation of these ex parte conversations came when the Court moved all hearings in this case from the public motion day time schedule on 10:00 am. to 2:30 in the afternoon and placed court security personnel directly behind Millan when Millan was speaking at the court podium. These security personnel watched every move Millan made, entering the Court at the same time as Millan and sitting in the public seats behind and to the side of Millan, intimidating Millan in such a way that he was not able to have the freedom to argue his case. Millan can find no reason for the movement of Millan's case away from public view to 2:30 in the afternoon and Millan can find no reason for the

presence and intimidation of Millan by court security personnel in this action.

There is no record that the District Court has ever had to discipline Millan, or that there has been any disruptive conduct by Millan. further, there is no record of any misrepresentation or discourtesy to the District Court that would provide any reason for the drastic measures that the court put in place. Millan believes that the ex parte conversation with Lubell and "Harry" were the catalyst for these drastic measures that began on the morning of September 26, 1988 and carried into the other hearings in this case. Millan to this day has never been informed by the court of the necessity for the security personnel provided by the court to watch Millan.

Although Millan has no way of knowing what the two men talked about,

the ex parte conversation occurred after September 13, 1988 and the Court moved the case out of the regular motion day calendar schedule into an afternoon schedule behind his criminal calendar on September 26, 1988, and placed security personnel behind Millan when Millan was trying to argue his case at the court podium that same day.

Court Records and Opinions

In any proceeding before the District Courts, the final written orders of the court have critical significance, these are the records that the courts of appeal rely on to examine any appeal before them. In this case the bias of the District Court is clearly shown by the following:

The District Court in its Order granting partial summary judgment (CR-93) to defendants relies on three

events that did not happen and Millan challenges the District Court to produce the records in this case that the three listed events occurred in the manner that the district court has noted them in its order (See: App D, pgs A-14-16)

(a) The Court,

> "at the July 25 shareholder meeting, Millan himself filled out and back-dated a blank stock certificate to reflect Marsha Bennett's ownership of 15,000 shares of Fashion Stock."

Nothing of the kind happened at the shareholders meeting on July 25.

(b) The Court,

> "Citing evidentiary rules relating to evidence of similar acts, he also alleges that Bennett and Mrs. Steinbaugh laid waste to their home in order to collect insurance proceeds."
> (Appendix D, page A-20.)

There is nothing in the records of these proceedings that will show that Millan ever made such an allegation

either orally or in any written document before this Court.

(c) The Court,

> "A special Board meeting was called for July 25, 1984. On that day, Millan met with Bennett and Steinbaugh...." (App D, pg A-13-14)

There is nothing in the court records that reflect Millan met with Steinbaugh on July 25, 1984 or at any time after the breakup of Bennett and Millan in early June 1984.

(d) The Court,

> "Bennett denies the charge, alleging that she was not even an officer of the corporation at that time. having resigned on July 31, 1984. The declaration of Murray Gardner [the president of the corporation](brackets mine) however states that Bennett never resigned at any time and that subsequent to July, 1984, she sent an accountant who had full access to Fashion's books and records for purposes of preparing tax forms and financial statements." (App D, page A-17)

The District Court neglected to say that the "accountant" was Uday Raj Sawhney, the present husband of Bennett,

a material witness that handled the corporations tax and financial affairs from 1984 until 1987, and that Bennett and Lubell concealed his identity from Millan and that Uday Raj Sawhney was the reason for the perjury, concealment of documents and witnesses as shown in Appendix BB[B]-[I], pages A-143-158.

Actions of the Law Clerk "Harry"

It is Millan's view that a law clerk is much more than office staff to a judge.

> "They are sounding boards for tentative opinions and legal researchers who seek authorities that affect decision. Clerks are privy to the judge's thoughts in a way that neither parties to the lawsuit nor his most intimate family members may be." Hall v. Small Business Admin., 695 F.2d 175 (5th Cir. 1983).

The law clerk has a duty

> "as much as that of the trial judge to avoid contacts outside the record that might affect the outcome of the litigation."

Kennedy v. Great Atlantic and Pacific Tea Co., 551 F.2d 593, 596 (5th Cir. 1977).

A law clerk may not do what is prohibited to the judge. Id. See also Price Bros. Co. v. Philadelphia Gear Corp., 629 F.2d 444, 447 (6th Cir. 1980). Therefore, a law clerk may not have ex parte communications with parties to a litigation pending or impending. Such contact would be grounds for recusal and reversal of the case.

The Court Reporter

Millan further believes that the Court Reporter has a further duty to be impartial and to reproduce complete transcripts of court hearings in time for noticed appeals. Millan filed a notice of appeal on October 17, 1988 and requested transcripts of the hearings of September 26, 1988 and October 17, 1988 from the court reporter. It was not

until February 27, 1989 that Millan received copies of the transcripts. However the morning session of September 26, 1988 was not sent to Millan and to this date of May 27, 1990 Millan has never received that critical document from the court reporter. Millan has not submitted payment to the court reporter because the transcripts were incomplete. Millan will submit payment when the transcripts he ordered are complete and sent to Millan.

Federal Rules of Civil Procedure "Rule 11"

A litigant is entitled to due process, an impartial tribunal, and to a judge who obeys the mandate of the law. Rule 11 was amended by Congress in 1983.

> "The new language is intended to reduce the reluctance of courts to impose sanctions . . . by emphasizing the responsibilities of the attorney and reinforcing those

> obligations by the imposition of sanctions." Advisory Committee Note, 97 F.R.D. 165, 198 (1983).

Rule 11 requires that an attorney certifies by his signature that "to the best of his knowledge, information, and belief formed after reasonable inquiry," the paper is well grounded in fact and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law. Fed.R.Civ.P. 11. The amended rule makes sanctions mandatory once a violation of any of the certification requirements is found.

> "If a pleading, motion, or other paper is signed in violation of this rule, the court . . . shall impose . . .an appropriate sanction." Id.

The court does not have discretion to conclude that sanctions are unwarranted and to deny them.

> "By making sanctions mandatory, the drafters of Rule 11 sought to discourage any collegial

inclination to overlook or minimize violations." Nelken, Sanctions Under Amended Federal Rule 11--Some "Chilling" Problems in the Struggle between Compensation and Punishment, 74 Geo. L.R. 1313, 1322 (1986).

The detection and punishment of a violation of the signing requirement, encouraged by the amended Rule, is part of the court's responsibility for securing the system's effective operation. The court thereafter has the power to sanction the attorney, the client, or both, with discretion to tailor the sanctions to the facts of the case.

Enforcing Rule 11 is a judge's duty. Once a judge is made aware of a Rule 11 violation, he must investigate and sanction the offender. A motion for Rule 11 sanctions may be frivolous, but if it is serious, it is not to be ignored. See Szabo Food Service, Inc. v. Canteen Corp, 823 F.2d 1073, 1084

(7th Cir. 1987), cert. den'd, U.S. 108 S.Ct. 1101, L.Ed. 2d 1988. The Szabo court held that a Rule 11 motion which was brushed away required an explanation for the abrupt dismissal of the claim. Id.

Inherent in Rule 11 requiring reasonable inquiry into facts which support pleadings is the continuing duty to tell the truth. See Calif. Code of Professional Conduct Rule 7-105. (See: **Appendix U, pg A-120-121.**) This obligation extends to statutory language, case law, and facts. In addition, an attorney (or his client) must not suppress any evidence he is legally obligated to reveal. Thus, an attorney who violates the Rule 11 accuracy in pleading also violates his professional code of ethics.

In this instant case attorney Steven Lubell has been given open season

on Millan's rights by the District Court by telling Millan to take his complaints of attorney misconduct to the State Bar of California.

> "Once the court finds an attorney has violated rule 11, it must impose sanctions." Unioil Inc., et al. v. E. F. Hutton, et al., 809 F.2d 548, 559 (9th Cir. 1986).

While a basic purpose of Rule 11 is to streamline litigation and avoid delay,

> ". . . a district court may impose a punitive sanction for the filing of a paper that lacks factual foundation and is intended to mislead the Court and opposing parties, even if the paper does not significantly delay proceedings because of the disrespect shown to the judicial process." Mercury Service, Inc. v. Allied Bank of Texas, 117 F.R.D. 147, 156 (1987).

Thus, sanctions against

> ". . . the unscrupulous lawyer knowingly deceiving the court" are within the scope of the court's Rule 11 interpretation. Golden Eagle Distributing Corp. v. Burroughs Corp., 801 F.2d 1531 (9th Cir. 1986).

Thus, a pro se litigant has a right to be protected from partial and biased

judges, to have the law as it is written enforced, and to have fair and honest dealings with opposing attorneys. Any pro se litigant has a basic right to a fair trial in front of an unprejudiced factfinder.

3. WHETHER A LITIGANT WHO HAS BEEN THE VICTIM OF FRAUD ON THE COURT CONTINUES TO BE BOUND BY THE FINAL JUDGMENT RULE BEFORE HE MAY SEEK RELIEF FROM THE COURTS OF APPEAL OR THE UNITED STATES SUPREME COURT WHEN THE DISTRICT COURT REFUSES TO ACT UPON THE COMPLAINTS OF MISCONDUCT BY THE ADVERSE PARTY.

There can be no question more important for the people of the United States to know than that their courts, particularly their federal courts and the judicial process, is completely and fairly protected from all who seek to deny the equal representation and access to the courts guaranteed to all citizens by the United States Constitution. This question affects each and every person

that seeks redress within the confines of the federal courts. The integrity of the judicial process demands that each citizen be treated fairly and equally before the bench of the United States courts. There can be no room for even the slightest fraud or misconduct to stain the integrity of the United States federal courts.

The Congress has spoken with an emphatic voice by enacting Federal Rules of Civil Procedure Rule 60(b), 28 U.S.C.A., "Fraud Upon the Court:"

> "On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been

satisfied, released or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to grant relief to a defendant not actually personally notified as provided in Title 28, U.S.C. § 1655, or to set aside a judgment for fraud upon the court. Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review, are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action."

Millan contends that if the courts have the power to set aside a judgment for fraud and misconduct, they most certainly have the power to set aside

judgments, orders or proceedings before final judgment when brought to their attention by the aggrieved party. This is particularly true when the District Court has refused to do its duty to enforce the law as it is written as is the case in this instant action.

The Supreme Court of the United States has spoken with clear language of the duties of the courts when fraud, concealment of documents and other misconduct is discovered in any proceeding within the federal court system. The court's words are clear in this regard. The judgment, order or proceeding is null and void.

The Supreme Court spoke of this in Hazel-Atlas Glass Co. v. Hartford-Empire Co. where attorneys for Hartford-Empire had obtained a judgment by fraud on the court.

"This action involves far more than an injury to a single litigant. It is a wrong against the institutions set up to protect and safeguard the public, institutions in which fraud cannot complacently be tolerated consistently with the good order of society. Surely it cannot be that preservation of the integrity of the judicial process must always wait upon the diligence of litigants to safeguard the public welfare demands that the agencies of public justice be not so impotent that they must always be mute and helpless victims of deception and fraud. Hazel-Atlas Glass Company v. Hartford-Empire Co., 322 U.S. 246-248 (1943)."

In this instant case, the plaintiff has been the victim of perjury, concealment of witnesses and documents as documented above in the preceding pages of this Writ of Mandamus.

The Supreme Court has spoken very clearly upon the issue of concealment of documents and the effect of their concealment upon a judgment in a case.

"Our system of civil litigation cannot function if parties, in violation of court orders, suppress information called for upon

discovery. "Mutual knowledge of all the relevant facts gathered by both parties is essential to proper litigation. To that end, either party may compel the other to disgorge whatever facts he has in his possession." Hickman v. Taylor, 329 U.S. 495, 507, 67 S.Ct. 385, 392, 91 L.Ed. 451 (1947). The Federal Rules of Civil Procedure the discovery process for the earlier--and inadequate--reliance on pleadings for notice-giving, issue-formulation, and fact-revelation. As the Supreme Court stated in Hickman v. Taylor, supra, "civil trials in the federal courts no longer need be carried on in the dark. The way is now clear, consistent with recognized privileges, for the parties to obtain the fullest possible knowledge of the issues and facts before trial." 329 U.S. at 501, 67 S.Ct. at 389. The aim of these liberal discovery rules is to "make a trial less a game of blind man's bluff and more a fair contest with the basic issues and facts disclosed to the fullest practicable extent." United States v. Proctor & Gamble Co., 356 U.S. 677, 683, 78 S.Ct. 983, 986, 2 L.Ed.2d 1077 (1958). It is axiomatic that "[d]iscovery by interrogatory requires candor in responding." Dollar v. Long Mfg. N.C., Inc., 561 F.2d 613, 616 (5th Cir. 1977).

"Through its misconduct in this case, Ford completely sabotaged the federal trial machinery, precluding the "fair contest" which the

Federal Rules of Civil Procedure are intended to assure." Rozier v. Ford Motor Co., 573 F.2d 1332 (1978).

It does not stand to reason that the final judgment rule was enacted by Congress to allow the perpetrators of fraud on the court, perjury, concealment of documents, discovery misconduct and misrepresentation of prior court proceedings to hide behind its cloak, make the aggrieved party go through the expense of trial and then through the expense of the appeal process before the aggrieved party could seek relief. Particularly, the final judgment rule was not enacted to allow a district court to proceed with the conduct of a case when the misconduct of the opposing side was brought to its attention and that district court refused to act as was its duty under the law to so act.

In this instant action, Millan has been prevented by the perjury, fraud on the court, concealment of documents and witnesses from amending his complaint and has caused a partial summary judgement against him in favor of the defendants in this action. Millan has further been placed in a position of having reported the misconduct to the District Court only to be told by that court to take his complaints to the State Bar of California. By that action the court has prevented Millan from fully and fairly being able to present his case.

On June 13, 1988 filed a motion to recuse the Hon. William J. Rea concurrently with a motion to disqualify Lubell. It has now been almost two years since Millan filed that motion and at this writing the District Court has refused to render a decision.

V. CONCLUSION

The actions of defendant Marsha Bennett and defense counsel taken singly would be sufficient to warrant disqualification; however, taken in their totality they suggest a pattern of misconduct that is far beyond any that this petitioner can find in any cited case.

Millan has provided the Court with the evidence of this misconduct and the pervasive nature of its use in completely prejudicing Millan's case.

Millan has further provided this Court with the actions of the District Court in its response to Millan's pleas for the Court to step in and put a stop to the misconduct so pervasive in this case.

Millan has also provided this Court with his actions in trying to appeal to

the Ninth Circuit Court of Appeals and his being unable to comply with the Rules of the Court of Appeals by the actions or inaction of the District Court and its clerks.

It is with the above in mind that Millan has presented the United States Supreme Court with the facts in this case and has asked this Court to review the actions of the District Court, defendant Marsha Bennett and defense counsel Steven Lubell and determine if the actions related in this document satisfy the intent of the framers of the Constitution, the Canons of the Judiciary, The Rules of Professional Conduct, the Federal Rules of Civil Procedure and the Rules of Court.

Millan firmly believes that a fair reading of this Writ of Mandamus will lead this Court to grant the following orders to Millan.

1. An **ORDER** recusing the Hon. Judge William J. Rea.

2. An **ORDER** disqualifying defense counsel Steven Lubell.

3. An **ORDER** striking the answer and any defense of defendant Marsha Bennett.

4. An **ORDER** for summary judgment against defendant Marsha Bennett.

5. An **ORDER** striking the answer and any defense of defendant Colleen Steinbaugh.

6. An **ORDER** for summary judgment against defendant Colleen Steinbaugh.

7. An **ORDER** for costs and attorneys' fees as the Court deems proper.

RESPECTFULLY SUBMITTED

This date of July 10, 1990

Richard Millan

RICHARD MILLAN
COUNSEL OF RECORD
In Propria Persona